IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2326 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IOC OFFICERS ASSOCIATION

Versus

CHAIRMAN I.O.C.LTD.

Appearance:

1. Special Civil Application No. 2326 of 2001

MR MUKUL SINHA for Petitioner No. 1

MR R.P. BHATT, SR. ADVOCATE WITH MR. MANISH R BHATT for Respondent No. 1-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/08/2001

C.A.V. JUDGEMENT

1. IOC Officers Association-petitioner has filed this petition under Article 226 of the Constitution of

India and prayed that this court may restrain the respondents from paying over the amount of one day wage deducted from the salary of member officers to any other agency including any official agency and also direct the respondent to pay over to the petitioner association the rest of the amount, which is still not paid but is being held up by the respondents as per the list shown in the letter of the President of the Association dated 26.3.2001 along with appropriate interest thereon.

BACKGROUND OF THE MATTER:

2. The facts giving rise to this petition are as under:

2.1 On the morning of 26.1.2001, an earthquake of more than 7 rechter scale rocked Gujarat State and other parts of the country, in which number of lives and valuable property have been lost, leaving thousand of people homeless. The Indian Oil Corporation (hereinafter referred to as `the IOC'-Company) on 26.1.2001 itself organised bridging of kerosene from its Siddhpur terminal to the earthquake affected area. The product despatches were maximised from Gujarat Refinery and Siddhpur, Rajkot and Sabarmati terminals. The IOC arranged sufficient stock of jet fuel, personnel and equipment to meet the fuel requirements of air borne relief operations as well as refuelling for civil and VVIP air-crafts. Make shift arrangements for distribution of Indane cooking gas cylinders with on the spot delivery of refill.

2.2 On 27.1.2001 senior officers of the Company from Mumbai and Ahmedabad reached Kandla to assess the supply situation and quantum of damage. The IOC Executive Director (Western Region) camped at Bhuj to personally arrange relief operation as well as restoration of POL supplies. Two 500 KVA diesel generators despatched from Ahmedabad for restoration of power. An officer along with emergency fire/rescue tender equipped with a light mast, fire operators, technicians, gas cutters, 2 DA cylinders and 2 oxygen cylinders were sent to Bhuj. On the same day, 4 sets of gas cutting equipments with 9 DA cylinders and 18 oxygen cylinders and a JCB excavator were also sent for relief work. On 28.1.2001 3 more diesel generators arranged.

2.3 On 29.1.2001 two more high capacity diesel generators arranged. The Chairman, IOC, Director and Additional Secretary, Ministry of Petroleum reached Bhuj. On 30.1.2001 organised cranes, gas cutters, doctors, excavators etc., medicines worth Rs. 55,000/- rushed to

Kandla with a team of doctors, senior pharmacists and medical assistants. Various provisions and facilities were provided for. The Board also resolved to contribute Rs. 7.50 crores to Prime Minister's National Relief Fund and in addition also decided to contribute Rs. 2.50 crores towards relief and rehabilitation activities to be undertaken by the Corporation. A committee of high level officers was constituted. On 31.1.2001 the Chairman issued appeal to all the employees to extend help to the affected population and contribute one day's salary towards worthy cause. On 1.2.2001 the Corporate office advised heads of the refineries and units to give wide publicity to the appeal amongst the employees, collect the contribution from the employees and advise the headquarter so that consolidated contribution could be given. On 6.2.2001 Corporate office advised that the Chairman had issued appeal to the employee on 31.1.2001 to contribute one day's salary. It was clarified that the collection would be given to Gujarat Chief Minister's Relief Fund. The Government of India, Ministry of Petroleum advised the Chief Executives of all the Oil Public Sector udertakings including the IOC to contribute to the Prime Minister's Relief Fund for the benefit of the affected area of the Gujarat. On 20.2.2001 the Corporate office advised all the division heads that the amount of contribution received from the employees by division may be advised so that consolidated contribution to Gujarat Chief Minister's Relief Fund on behalf of the employees at Corporate level could be made.

2.4 On 20.2.2001 the Chief Minister, Gujarat State, conveyed gratitude to the Chairman of the IOC for the measures taken by him.

2.5 On 26.2.2001 the Corporate Office advised the Ministry of Petroleum that based upon an appeal made by the Chairman, the employees of the IOC would be contributing one day's salary to Gujarat Chief Minister's Relief Fund towards earthquake relief.

2.6 On 28.2.2001 the Chairman was informed by the Chief Secretary of the State that the Government of Gujarat expressed its sincere thanks for the excellent cooperation during the period of calamity. This letter however recorded that since the process of rehabilitation is long and complex, the Government will need continuous support of organisation like IOC. On 7.3.2001 the heads of the division were reminded and requested that the amount of contribution received from employees by the division may be conveyed by faxes .

PRESENT CONTROVERSY:

2.7 The Officers' Association-petitioner recorded by letter dated 21.3.2001 that the amount of deduction received from the salary was required to be handed over to the Association to be utilised by the Association in a direct relief work. It is stated that the Officers had agreed to the deduction on the appeal of the association and not of the Chairman. The controversy was raised thus by this letter. On 23.3.2001 the Director (Human Resources) addressed a letter to the President of the Association clarifying that the deduction of one day's salary was made following appeal of the Chairman. The consolidated amount of contribution made by the employees will be donated by the Corporation on behalf of all the employees in accordance with long established tradition/practice of the organisation. On 26.3.2001 the Officers' Association reiterated that the management cannot make the payment to any government agency from the moneys so deducted as it would amount to grossly illegal and improper action.

2.8 On 5.4.2001 the Association issued communication to all members. On 11.4.2001 the Corporation issued communication to all the employees clarifying the stand of the Corporation. It is stated that in case there is non-identification with the cause of the Corporation, it will not be in tune with the long established traditions. However, if any officer decided to disassociate from the corporate endeavour, he will submit an application as per the format for crediting back the deducted amount to his salary.

2.9 In view of the same, the Association filed the present petition.

PETITIONERS' CONTENTION:

3. The learned advocate for the petitioner also invited my attention to the further correspondence made by the petitioner with their members. He has also invited my attention to the letter dated 21.3.2001 addressed to the Chairman, IOC, Corporate Office in connection with deduction of one day's salary for rehabilitation of earthquake victims of Gujarat and further letter dated 26.3.2001 in which the petitioner called upon the IOC to pay over the entire amount of deduction to the petitioner so that they can carry out the earthquake work.

3.1 The petitioner submitted that responding to the appeal and authorisation made by the Association, the IOC in fact started making the payments of the money deducted from the member officers salary to the Association and by 2nd March, 2001, it had paid the following amounts:

(i) Rs. 2,25,000/- from Western Region Pipeline Unit, Rajkot.

(ii) Rs. 61,755/- from Pipeline Unit at Barauni

(iii) Rs. 2,98,839/- from Refinery Unit at Barauni

(iv) Rs. 29,989/- from Panipat Unit

(v) Rs. 8,00,000/- from Western Region Marketing Region.

3.2 The petitioner further contended that the action of the IOC of circulating the circular amongst the employees under the title of `request for refund' was also arbitrary inasmuch as the money was already contributed for a noble cause by the employee and therefore, the employee cannot be put in the humiliating or embarrassing situation by requesting for refund. In fact, the IOC wanted to shift the onus on the employees and argue that in case the employees do not ask for the refund, the money would automatically belong to IOC. The petitioner submitted that even if the employees do not ask for the refund, the money cannot belong to IOC, as the IOC did not have the authority to deduct the same for the Chief Minister's fund in the first phase of itself.

3.3 The petitioner further contended that instead, thousands of Officers all over the country started writing to the Executive Director by affixing their individual signatures specifically pointing out that they have contributed one day's salary for carrying out relief/rehabilitation work for earthquake victims by the IOC officer's association and therefore, the money should be paid over to the association and hence the question of taking refund does not arise.

3.4 In the aforesaid facts and circumstances, it is submitted that facts in the present case speak for themselves eloquently and it is clear that the IOC management is unauthorisedly holding the money of the member officers, which were contributed to the association for carrying out the relief work directly and not being contributed to the Chief Minister's fund and therefore, the IOC which is a public body, under Article

12, cannot be permitted to act in an irrational and arbitrary manner and this court should issue a writ of mandamus to the IOC to hand over the rest of the money to the Association-petitioner.

3.5 At the time of hearing of this petition, Mr. Mukul Sinha, learned advocate for the petitioner has invited my attention to Article 226(2) of the Constitution. He has stated that the respondent IOC is State. He has also stated that the action of the respondent is arbitrary. Therefore, the petitioner-association can file writ petition and challenge the action of the respondents. He has invited my attention to the letter dated 27.1.2001 addressed by the Indian Oil Officers' Association to all members of Western Region (Pipelines) which is produced at Annexure-I on page 8 of the petition. He has also invited my attention to another letter dated 29.1.2001 addressed by the petitioner to its members and also the letter of the same date addressed to the General Manager (W.R.), the Secretaries/CEG Members, IOCA in this behalf.

RESPONDENT'S SUBMISSIONS:

5.1 This court has already issued notice. In response to the said notice Mr. R.P. Bhatt, learned senior counsel, appeared on behalf of the IOC.

5.2 On 16.4.2001 the Corporation filed detailed affidavit stating the correct facts and raising preliminary contentions. The Union filed rejoinder on 26.4.2001.

PRELIMINARY OBJECTION:

5.3 That various refineries of the the respondent-IOC are situated in different States, namely, Gauhati Refinery in Assam, Baruni Refinery in Bihar, Gujarat Refinery in Baroda, Haldia Refinery in Western Bengal, Mathura Refinery in Uttar Pradesh, Panipat Refinery in Haryana, Assam Oil Division at Digboi and Headquarters and Corporate Office at Delhi, Registered Office at Mumbai and Pipelines, Marketing Offices in different regions like Southern Region, Eastern Region, Northern Region and Western Region. Therefore, this court has no jurisdiction to entertain this petition.

5.4 He has further submitted that the Corporation is

though Government of India undertaking and a Government company under Section 617 of the Companies Act is not discharging any statutory function. There are no rules, regulations or provisions of statute which require the Corporation to act in a particular manner in so far as donating the employees' contribution for earthquake relief is concerned. He therefore submitted that there is no legal obligation or duty cast under the statute, rules, regulations or provisions of law, no writ can be maintained against the Corporation.

5.5 He further submitted that the so called cause of action for the relief claimed arises out of understanding, arrangement or contract, for breach of which, no writ petition is maintainable in the High Court.

5.6 The contract is between an individual and the Company. Even if a request comes through Association, salary deduction from an individual account was made. If individual did not agree, he alone can request the management to refund the money or to act in a particular manner. No agent of an employee can dictate the management how the fund is to be utilised. The writ at the instance of the Association certainly, therefore, is not maintainable. He further submitted that no legal right much less fundamental right or any infringement thereof either of the Association or any of its members is involved. Unless there is involvement of fundamental right, breach thereof, this court may not exercise its power under Article 226 of the Constitution. He further submitted that in the set up, there are about 32,500 employees at different locations, out of which the strength of the officers is about 9,600. The petition filed by the Officers' Association cannot be treated as a representative petition for the entire strength of employees of the Corporation.

SUBMISSIONS ON MERITS:

6. The learned counsel for the respondent has further submitted that assuming that the aforesaid preliminary objections are not sustainable and the writ petition at law is maintainable, even though no relief or moulded relief of the nature could be granted against the Corporation for the following reasons.

6.1 He submitted that the Corporation took up immediate action on the knowledge of earthquake on 26.1.2001 which has been narrated above. He submitted that all the steps were taken in not only maintaining

supply of petroleum products to the affected areas but also providing immediate succour to the victims of the earthquake by sending relief, rescue and medical teams to the affected areas. On 31.1.2001 an appeal was issued by the Chairman of the Corporation to all the employees of the Corporation to contribute one day's salary towards worthy cause and supporting the relief and rehabilitation activity being carried out in the affected areas. He further submitted that from the record of the case it was clear that it was a corporate decision and as a result of Chairman's appeal to the employees to contribute one day's salary to supplement government's effort in extending relief/rehabilitation operation, that the contributions were received. Beginning from 1.2.2001, the heads of the divisions were advised that the collection would be given to Gujarat Chief Minister's Relief Fund and were requested to advise the amount of contribution received from the employees so that consolidated contribution could be donated on behalf of the employees at the corporate level. Thus, the employees of the Corporation was fully aware of the Corporation's decision. The issue, therefore, raised by the Association that the employees responded to the call of the Association is not maintainable on this clear record. It is stated that the decision taken at the Corporate level involved a policy decision and not an individual decision. Therefore, the court will not interfere in the matter of policy decision therefor.

6.2 He further submitted that on humanitarian ground it has been a consistent practice of the Corporation to rise to the occasion and give assistance in crisis or calamity. He submitted that on the occasion of earthquake in the year 1993 in Maharashtra, Corporation issued an appeal to the employees and they had donated a day's salary which was given to the Prime Minister's Relief Fund. It is also submitted that in November 1999 at the time of Orissa Cyclone, one day's salary of officers was contributed to Prime Minister's Relief Fund. He therefore submitted that for earlier periods without any exception when such calamities have occurred the employees contributed the amounts in pursuance of the appeal made. Therefore, the action of the management is in line with its consistent practice followed.

6.3 He further submitted that from the communication referred to in paragraph 12 at page 43, it will be clear that the units of the Association have made different requests and they are not uniform about their stand, different requests have come for collected amount to be paid over to Association's unit office, Headquarter

office or to a charitable trust payable at Rajkot. In fact the petitioner had decided to donate one day's salary towards the Chief Minister's Relief Fund. Thus, in view of different requests in paragraph 12(a) to 12(i) and since the requests were not in conformity with the policy decision of the Corporation, the Corporation is entitled to reject the request of the petitioner and insist for the donation of the amount to the Chief Minister's fund or to any government agency.

6.4 He further submitted that the Association is not a legal body and the President of the Association would influence other employees regarding collecting their contribution from the employer. He submitted that the said decision is contrary to and inconsistent with the policy of the Corporation and therefore, the respondent IOC cannot accede to the request made by the President of the Association. He submitted that the attempt of the association to produce signatures from few officers or from a local Rajkot unit Oil Employees' Association will not establish or prove that the Association had a legal authority to represent officers and non-officers of the entire Corporation in all its refineries and divisions. He further submitted that the Corporation by its letter dated 21.3.2001 clarified that the deduction of one day's salary was made following an appeal of the Chairman and the consolidated amount will be donated by the Corporation on behalf of all the employees in accordance with long established tradition/practice.

6.5 He further submitted that the action/approach or decision of the Corporation is neither unreasonable, irrational, unfair or arbitrary. It is the volition of an individual officer or employee to donate or not to donate any amount to any cause. There was no compulsion on the part of the Corporation but when the employees as a whole responded to the call of the management, they have to accept the policy decision or the management decision to donate the amount the manner the Corporation will deem fit so as to enhance the reputation of the Corporation. It is further submitted that the consolidated amount of contribution will be donated by the Corporation on behalf of the employees in accordance with the long established tradition/practice. While accomplishment of a noble objective is important, at the same time, how it is achieved is also equally important. The respondent IOC is collective of all employees and it brightens the image of the Corporation when the employees identify themselves with the organisation as a whole.

6.6 He further submitted that the petitioner raised

disputed question of facts as to whether contribution was made as a result of the appeal made by the Chairman or by the Association. There are assertions and denials in the petition and the reply. The averments, therefore, made in the petition that the employees of the Corporation responded to the appeal of the Association cannot be accepted particularly in view of the consequences and events stated in the reply and therefore this court cannot enter into the factual controversy in a petition filed under Article 226/227 of the Constitution of India. He further pointed out that the association has made averments in paragraph 3(e) of the petition that it has received total amount of about Rs. 14 lakhs whereas it has spent hardly an amount of Rs. 1,56,000/-. The assertion that the Association could not fulfil its commitment is, therefore, not borne out from the record produced by the Association. The association has still a large amount of fund available to it which have to be either refunded to the concerned employees or can be utilised for donating to government relief fund. It is further submitted that the action of the Corporation is bona fide inasmuch as whoever does not want to donate the contribution as per the corporate decision, he will be refunded the amount deducted from his salary. In view of this option which is given on 11.4.2001, in fact, no issue survives for determination by this court.

6.7 He further submitted that IOC is a government of India undertaking and it is accountable and answerable not only to its own employees but also to the government. The Corporation cannot deviate from its consistent policy which is hitherto followed and which policy is to help the calamity through the government agency or recognised funds. The Corporation, therefore, cannot be made an agency or an instrument to part with the moneys of the employees to an association even if the object or the purpose of the association is avowed and genuine. He further submitted that the Corporation has made commitment to the government. The government also expects a continued support and cooperation of the organisation like IOC.

MY CONCLUSION:

7. I have considered the rival submissions. In my view in a case like earthquake when the IOC makes an appeal and when the employees are prepared to donate one day's salary which in turn collected by the IOC and thereafter IOC donating the same either to the Prime Minister's Relief Fund or to the Chief Minister's Relief Fund is purely an action based upon the volition of

employees on one part and the arrangement between the employer and the employees on the other. In my view, no legal right much less fundamental right of the petitioner is violated if the if the amount collected by the IOC is donated to the Prime Minister's Relief Fund or to the Chief Minister's Relief Fund and therefore the issue raised by the petitioner Association does not survive and the petition is not maintainable at law.

8. The petitioner raised question of policy formulated by the IOC. The IOC as a matter of policy has decided to make an appeal to all its employees to donate one day's salary and further decided to hand over the same either to the Chief Minister's Relief Fund or to the Prime Minister's Relief Fund. Normally, this court will not entertain any petition when the question of policy is involved.

9 In this petition the petitioner has asked for a writ of mandamus. A writ of mandamus can be issued by this court provided the petitioner has any legal right and the IOC has any legal duty. In this case whether to donate one day's salary or not, is depended upon the volition of the employee and there is no legal duty or obligation on the employee to say that one day's salary is deducted. The entire question is humanitarian question or showing a sympathy to large number of people who suffer by earthquake and therefore there is no violation of legal right or fundamental right and the writ of mandamus cannot be issued by this court. In my view not even a writ of mandamus or any other writ can be issued but even no relief can be granted by this court in this behalf. Even the relief which can be moulded by this court also cannot be given to the petitioner in this petition.

10 In my view the right that can be enforced in this Article is either fundamental right or a legal right. In my view it is well settled position in law that no writ lies to enforce a right which is founded purely on contract. (See: Lekhraj Vs. Dy. Custodian, AIR 1966 SC 344 and also Bachhanidhi Vs. State of Orissa, AIR 1972 SC 843). In my view here whether to give donation from salary to a charitable purpose is purely depends upon the volition of the parties. There is not even a contract to that extent. Therefore, the petitioner association has no legal right or no fundamental right by which the right can be enforced. It is no doubt true that the petitioner association is trying to enforce the so called alleged right against the respondent Corporation but that right is not governed by any law,

regulation or rules and therefore the said contention has no force in law. The said contention also cannot be enforced at law. Therefore, the writ petition is not maintainable.

10. In view of the same, this petition is rejected. Rule discharged. No order as to costs.

(K.M. MEHTA, J)

(pkn)